



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

September 14, 2006

Ref: 8ENF-UFO

CERTIFIED MAIL 7005-0390-0000-4847-5727
RETURN RECEIPT REQUESTED

James R. Scheele, President
Williston Industrial Supply Corporation
4903 2nd Avenue West
Williston, North Dakota 58801-2477

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Complaint with Notice of Opportunity
for Hearing

Dear Mr. Scheele:

The enclosed document is a Complaint with Notice of Opportunity for Hearing ("complaint") for violations of the Safe Drinking Water Act ("SDWA"). Please carefully read the complaint soon, since it describes Williston Industrial Supply Corporation's ("WISCO's") rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. EPA is enclosing a copy of the Rules of Practice that govern these proceedings, an information sheet about the Small Business Regulatory Enforcement Fairness Act, and a required Public Notice associated with this complaint.

WISCO is required to take action within 30 calendar days of your receipt of this complaint to avoid the possibility of having a default judgment entered against WISCO that could impose the penalty amount proposed in the complaint.

Whether or not WISCO requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. WISCO may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, WISCO should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted. Public Notice of EPA's complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

If WISCO has technical questions relating to this matter, the person most knowledgeable on my staff is Nathan Wiser, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6211 or (303) 312-6211. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Mr. Wiser and Mr. Eppers can also be reached at the following addresses:

Nathan Wiser (Mail Code 8ENF-UFO)
Environmental Scientist
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

We urge WISCO's prompt attention to this matter.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Complaint with Notice of Opportunity for Hearing
Public Notice
Small Business Regulatory Enforcement Fairness Act fact sheet
40 CFR Part 22 Rules of Practice

cc: Deb Madison, Environmental Program Manager (with all enclosures)
Assiniboine and Sioux Tribes
P.O. Box 1027
Poplar, Montana 59255

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **SDWA-08-2006-0057**

In the Matter of:)	
)	
Williston Industrial Supply Corp.)	
A North Dakota Corporation,)	COMPLAINT WITH NOTICE OF
Respondent.)	OPPORTUNITY FOR HEARING
)	(COMPLAINT)
Proceedings under Section 1423(c))	
of the Safe Drinking Water Act)	
42 U.S.C. 300h-2(c))	

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 § U.S.C. 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned EPA official has been properly delegated the authority to issue this Complaint with Notice of Opportunity for Hearing (complaint).
3. EPA alleges that Williston Industrial Supply Corporation (Respondent) has violated the Act and proposes the assessment of a civil penalty, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before a presiding officer to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.
5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk
999 18th Street; Suite 300 (8RC)
Denver, Colorado 80202

within 30 calendar days (see 40 C.F. R. §22.15(a)) of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15(b) of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the penalty amount proposed in the complaint. Such action to make payment need not contain any response to, or admission of, the allegations in the complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Jim Eppers, Enforcement Attorney, at [1-800-227-8917; extension 6893 or 303-312-6893] or at the address identified in paragraph 26 herein. **Please note that calling Mr. Eppers or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class II wells in Indian country within the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.

9. Class II underground injection wells under the jurisdiction of the EPA are authorized to operate either under an EPA-issued permit or under a rule. To be eligible to operate under rule-authorization, a UIC well must be a Class II enhanced oil recovery well and must have been such a well at the time the EPA UIC program became effective. All other Class II wells must be authorized by an EPA-issued permit. Salt water disposal wells are wells that inject water produced to the surface from other oil or gas production wells.
10. The well subject to this action is a Class II salt water disposal well. This well is authorized under a permit issued by the EPA. This well is operated by Respondent and is located in Roosevelt County, Montana, within the exterior boundary of the Fort Peck Indian Reservation. The specific well and its location is:

Lough #1 SWD well
EPA Permit #MT20068-00091
T30N, R47E, Section 13, SE/4, NW/4.
11. EPA originally issued a permit for this well, with an effective date of August 28, 1985. The permit was originally permitted by EPA to a different operator. On April 9, 1993, the permit was transferred to Respondent.
12. The UIC permit, as modified on November 10, 1988 at part II(D)(1)(a)(i), and the regulations at 40 C.F.R. §146.23(c) require that Respondent must annually by February 15 submit the analytical results of a fluid sample collected in the previous reporting year which is representative of the injected fluid and analyzed, at least, for pH, specific conductivity, specific gravity and total dissolved solids, which report is known as an "annual fluid analysis." Each year since 1998, prior to the February 15 due date, EPA has sent a courtesy reminder letter to all Class II well operators, including Respondent, reminding operators of the obligation to timely submit their annual reporting, including a reminder about fluid analyses.
13. For the 2002, 2003, 2004 and 2005 reporting years, the annual fluid analysis was required to be submitted by February 15 of the year following each reporting year. EPA did not receive the 2002, 2003, 2004 and 2005 fluid analyses until June 11, 2003, April 16, 2004, May 6, 2005, and March 20, 2006, respectively. These are violations. See Attachment A to this complaint where this violation is summarized and labeled with the letter "A."
14. Respondent is incorporated in the State of North Dakota and is authorized to do business in the State of Montana. Respondent's principal office address is 4903 2nd Avenue West, Williston, North Dakota 58801-2477.
15. Respondent is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12).

16. The 4,302 feet deep well which is the subject of this complaint penetrates known or possible underground sources of drinking water (USDWs) including, but not limited to the Hell Creek, Fox Hills and Judith River geologic formations between the depths of 200 and 1,500 feet below ground surface. In addition, the injection zone for this well, the Dakota/Lakota aquifer between 4,000 and 4,290 feet depth, may be a USDW outside the ¼-mile radius surrounding the wellbore which was exempted as a USDW when the permit was originally issued.
17. A summary list of the violations alleged is included as Attachment A and is incorporated into this complaint.

COUNT 1

18. Respondent is in violation of the UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R. §146.23(c) by failing to timely submit analytical results of a fluid sample collected analyzed, at least, for pH, specific conductivity, specific gravity and total dissolved solids for the well referenced in paragraph 10. The duration of the Respondent's violation is shown in detail in Attachment A, with each such violation labeled with the letter "A."

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

19. The Act, as amended, authorizes the assessment of a civil penalty of up to \$32,500.00 per day, 42 U.S.C. § 300h-2(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the seriousness of the violation, the economic benefit resulting from the violation, Respondent's prior compliance history of such violation, any good-faith efforts to comply, the economic impact on Respondent, and other factors that justice may require. 42 U.S.C. §300h-2(c)(4)(B).
20. In light of the statutory factors and the specific facts of this case, EPA calculates and proposes that **Respondent pay a total penalty of \$4,041 (four thousand forty-one dollars)** for the violations alleged above, as explained below:

Seriousness of the Violations

The UIC program is heavily reliant upon accurate and representative self-reporting. Since there are so many injection wells in the country, regulators depend on well operators to abide by their self-monitoring and self-reporting requirements. Given the use of the injected wastewater's density in calculating a maximum allowable injection pressure limit, a well may be injecting at a pressure, which although compliant with the injection pressure limit measured at the surface pressure monitoring gauge, may be causing fracturing in the receiving injection zone. It is for this reason that EPA needs to know the specific gravity of the injected wastewater. Fracturing in the injection zone can lead to fluid migrating into a USDW. Furthermore, it confirms that the wastewater is, in fact, oil field brine, permissible for injection under the regulations and UIC permit

conditions

Economic Benefit

For Count 1, Respondent enjoyed an economic benefit by not timely committing expenditures to be in compliance. For Count 1, Respondent delayed the cost of reporting information for its well for a combined total of about ten months. The total economic benefit Respondent has enjoyed is estimated by EPA to be \$81.00 (eighty-one dollars).

Prior Compliance History

EPA Region 8 has taken one prior formal enforcement action against Respondent for violations of the UIC program regulations. That action, bearing Docket No. SDWA-8-99-71, was concluded in 2001. EPA made an upward adjustment to the proposed penalty based on this factor.

Good-Faith Efforts to Comply

Prior to each year's due date, EPA sent Respondent annual courtesy reminder letters regarding its annual reporting requirements for each of the years identified in Count 1. EPA also sent notices of violation after it discovered that Respondent had not timely and/or completely complied with its reporting obligations. In this case, following a lapse in fluid analysis reporting, EPA sent notices of violation dated May 9, 2003, April 8, 2005, and March 8, 2006. Respondent has had access to this well since the permit was transferred to it in 1993. Respondent has or should have all the monitoring data required to make the obligatory reports to EPA. EPA is not aware of any reason why Respondent failed to be timely in making its reports and has no knowledge that anyone is interfering with this control. EPA considers that Respondent has not made a good faith effort to comply. EPA made no adjustments to the proposed penalty due to this factor, but will consider any information Respondent may present regarding this factor.

Economic impact on the violator

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding this factor.

Other Matters that Justice may Require

EPA has made no additional adjustments to the penalty due to this factor.

21. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

Jim Eppers (8ENF-L)
Enforcement Attorney
U.S. EPA - Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

22. The provisions of this complaint shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.
23. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).
24. The presiding officer is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to US\$32,500.00, per day for each violation, as authorized in the statute, as amended.
25. This complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

Issued this 12TH day of September, 2006.

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 300

Denver, CO 80202-2466

**IF YOU WOULD LIKE TO HAVE COPIES OF ANY OF THE ATTACHMENTS,
PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON SEPTEMBER 14, 2006.**